IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.11710 OF 2002

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

DILUBHA BHAKTUBHA BASIYA

Appearance:

1. Special Civil Application No. 11710 of 2002

MR. HARDIK C. RAWAL for Petitioner

MRS. SANGEETA N. PAHWA for Respondent

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 18/10/2004

ORAL JUDGEMENT

Rule.

Mrs.Sangeeta N.Pahwa, learned Advocate, appears and waives service of Rule on behalf of the respondent.

2. The petitioner, Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation"

for short), has approached this Court being aggrieved of judgement and award dated 15th March, 2002 passed in Reference (IT) No.82 of 1995 whereby the learned Member of the Industrial Tribunal, Rajkot has ordered the petitioner-Corporation to consider the respondent-workman as P.M.Mechanic (Head) with effect from 1st April, 1976 and to fix his pay accordingly and also to pay him all the benefits including the salary, which works out to Rs.5,97,847.27 (Rupees Five Lakhs Ninety Seven Thousand Eight Hundred Forty Seven and Twenty Seven Paise Only).

3. The matter was referred to the Industrial Tribunal by order No.KH-HSMC-2354/O.V.R.148/1995. The facts of the case are that: the respondent-workman had joined the petitioner-Corporation on 20th April, 1972 as a Helper; he passed Artisan `C' examination on 16th December, 1974; and, he was promoted to the post of Artisan `C' on 2nd May, 1975 and was later on, confirmed on that post on 1st April, 1976. He was claiming the benefits of P.M.Mechanic (Head) with effect from 1st April, 1976. The learned Member of the Industrial Tribunal passed the impugned judgement and award drawing an adverse inference against the petitioner-Corporation from the fact that the petitioner-Corporation did not produce the work diary of the respondent-workman, though there was an order to produce the same. The learned Member of the Industrial Tribunal held that the respondent-workman was discharging duties as P.M.Mechanic (Head), and hence, the judgement and award under challenge was passed.

4. By moving a Draft Amendment in this Special Civil Application, it is pointed out that for promotion to the post of P.M.Mechanic (Head), the minimum requirement is that a person should have passed Artisan `A' examination. It is no where on the record that the respondent-workman possessed the requisite qualifications for promotion to the post of P.M. Mechanic (Head).

5. An affidavit-in-reply is filed by the respondent-workman, he has produced two documents with this affidavit-in-reply, namely, (i) call letter dated 25th February, 1977 whereby he was called for the examination of Artisan-A; (ii) letter dated 1st April, 1977/1st June, 1977 declaring him pass in `Artisan-A' examination. He was placed at Serial No.3 in the Select List.

6. In the Rejoinder Affidavit filed by the petitioner-Corporation, both these documents are explained by the Corporation. It is stated that the same

were pursuant to an advertisement for direct recruitment, but then, the respondent-workman was never appointed as `Artisan-A'. Though the respondent-workman had passed the examination and his name was placed at Serial No.3 in the Select List. From the aforesaid, it is clear that both the parties have not produced all relevant material before the learned Judge. Therefore, it is deemed fit to quash and set aside the judgement and award under challenge and remand the matter to the learned Member of the Industrial Tribunal to decide the same afresh after giving full opportunity to both the sides to produce all relevant material before the learned Member of the Industrial Tribunal. Accordingly, the petition is allowed. The impugned judgement and award of the Industrial Tribunal is quashed and set aside. The matter is remanded to the learned Member of the Industrial Tribunal, who shall give priority to the hearing of the matter and decide the same as early as possible, but, not later than 30th April, 2005. It will be open for both the sides to raise all possible contentions and produce supporting material. Rule is made absolute to the aforesaid extent only. No order as to costs.

(Ravi R. Tripathi, J.)

kamlesh*